2011 Investment Climate Statement

BUREAU OF ECONOMIC, ENERGY AND BUSINESS AFFAIRS

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Report

Openness to, and Restrictions upon, Foreign Investment

Moldova continues to take steps toward developing a stronger economy, reforming a cumbersome regulatory framework, combating corruption, and adopting reforms aimed at improving the business climate. The Government of Moldova (GOM), newly re-elected in January 2010 and representing a coalition which initially came into office in September 2009, has pledged to accelerate democratic and economic reforms begun during the past year and has reemphasized European orientation and integration as its fundamental foreign policy goal. After a prolonged recession in the 1990s, GDP grew for eight straight years between 2001 and 2008, primarily driven by soaring remittances from migrant workers. In 2009, like most countries in the region, Moldova was severely affected by the global economic crisis, experiencing a six percent drop in GDP against the backdrop of plummeting workers' remittances. In 2010, the economic trend turned positive, with GDP expanding 6.5 percent in the first nine months of the year as growth in major economic sectors picked up.

Moldova, which is consistently ranked as one of the poorest countries in Europe, relies heavily on investments, foreign trade, and remittances sent by Moldovans working abroad for economic growth. Moldova has benefitted from increased inflows of foreign direct investment (FDI) with the eastward expansion of the EU, which became the country's immediate neighbor following the January 1, 2007, accession of Romania. However, the global crisis took its toll on FDI, which fell more than 60 percent in 2009. Although the economy returned to pre-crisis growth rates in 2010, FDI inflows did not rebound. Remittances went up in 2010, but their growth was still below the double-digit growth rates of earlier years, possibly reflecting sluggish economic recovery in countries with large numbers of Moldovan migrant workers. The government has made efforts to tackle some obstacles to investment, such as corruption and red tape. The country had an Action Plan with the EU from 2004-2008 that set out a roadmap for democratic and economic reforms and the harmonization of Moldovan laws and regulations with European standards. Following expiration of the Action Plan in February 2008, Moldova started negotiations with the EU on an Association Agreement in January 2010, which the GOM hopes will raise the bilateral relationship to a new level. The GOM sees the Agreement as a framework that will bring Moldova closer to the EU through political association and economic integration.

As a country with a small market, Moldova benefits from liberalized trade and investment and wants to promote the export of its goods and services. Moldova has been a member of the WTO since 2001 and has signed free trade agreements with countries of the former Soviet Union (CIS) and southeast Europe. In December 2006, Moldova joined the Central European Free Trade Agreement. In 2008, Moldova moved from the extended generalized system of preferences (GSP-plus) with the EU to autonomous trade preferences, which expanded the duty-free access of Moldovan goods to EU markets. Moldovan exports to the EU were $537.7 million (51 percent of total Moldovan exports) in 2006. Exports grew 26 percent in 2007 to $679 million and another 21 percent in 2008 to $820 million before stagnating in 2009 when the economic crisis hit. Originally valid until 2012, the EU extended the autonomous trade preferences until 2015. Moldova seeks to further deepen its preferential trade arrangements with the EU in the negotiation of a Deep and Comprehensive Free Trade Agreement (DCFTA). In late 2010, the GOM made significant progress with the approval of an action plan for the negotiation of the DCFTA.

Attracting FDI is critical to enhancing the economy's competitiveness. The GOM has created an adequate legal base, including favorable tax treatment for investors. Under Moldovan law, foreign companies enjoy the same treatment as local companies – also known as the "national treatment principle." The GOM views investments as vital for sustainable economic growth and poverty reduction. However, the amount of FDI is far below the country's needs to create jobs and promote economic growth.

After years of low FDI following independence in 1991, FDI inflows steadily increased from 2004 to 2008. According to the National Bank of Moldova (NBM), FDI inflows in 2008 amounted to a record high $863.76 million. The world economic crisis contributed to an abrupt drop in foreign investment in 2009, when FDI totaled $360.01 million. In the first nine months of 2010 FDI dropped to $249.57 million. Recent years have seen large investments by Germany's Metro Cash & Carry, Germany's Draexlmaier, France's Societe Generale, Austria's Grawe insurance company, Austria's Raiffeisen Investment, the Netherlands' Easeur Holding B.V., Italy's Gruppo Veneto Banca, the U.S. investment fund NCH Capital and the U.S. equity fund Horizon Capital. American investments in Moldova are primarily in the wine and food industry, cosmetics, telecommunications, banking, and real estate.

Over the years, the GOM has made efforts to lower tax rates, strengthen tax administration, increase transparency, and simplify business regulations. Nevertheless, decision-making remains sometimes opaque and the application of laws and regulations inconsistent. While the coalition government provided more transparency and openness to the private sector in 2010, public service at lower levels remained cumbersome. The GOM must take more steps to reform public service and improve the quality of administrative performance. Moldova has a history of government interference in business decisions in favor of protected individuals, use of governmental powers to pressure businesses for personal or political gains, and selective application of regulations. Since the judicial system remains weak, recourse to the courts does not guarantee citizens and foreign investors an impartial ruling on alleged governmental misdeeds.

Following the parliamentary elections of July 2009, the GOM approved an Economic Stabilization and Recovery Program (ESRP), which focused on balancing public finances and liberalizing the highly regulated economy to jumpstart a faltering economy. The ESRP received the backing of the International Monetary Fund (IMF) in January 2010 with the approval of a combined three-year $580 million Extended Credit Facility/Extended Fund Facility to support the country’s economic program by restoring fiscal and external sustainability. Developed in 2009 to address problems at hand, the ESRP does not represent a substitute for the GOM's longer-term reform agenda. The National Development Strategy 2008-2011 (NDS) remains at the heart of the current cabinet’s vision. Seeking to improve living standards, the NDS is based on five basic pillars: consolidation of the rule of law, Transnistrian conflict resolution, competitiveness enhancement, human development, and regional development. The current NDS expires at the end of 2011 and the new GOM will focus on a new strategy.

In 2007, Moldova received $24.7 million from the USG Millennium Challenge Corporation (MCC) for a Threshold Country Program (TCP) which focused on supporting Moldova's anti-corruption efforts. In January 2010, the GOM signed an MCC Compact for $262 million. The Compact will fund two projects, one for road rehabilitation and the other for a transition to high value agriculture project, which will focus on rehabilitating centralized irrigation systems, providing technical assistance, and providing access to financing for farmers. The MCC Compact targets poverty reduction through economic growth.

The GOM launched the first privatization process for Moldova in 1994. It has adopted three separate privatization programs, including privatization via National Patrimonial Bonds (foreigners were not allowed to participate); via cash transactions for both locals and foreigners; and via a program which involved only cash privatization. The third program began in 1997-1998 and was extended to 2000. The program was later extended with some modifications to the end of 2006. Foreign investors have successfully participated in these privatizations. In 2007, Parliament passed a new privatization law which introduced a new plan for privatizing and managing state-owned assets with a focus on economic efficiency. The law has a list of assets, connected to the security of the state, which are not subject to privatization. The GOM also adopted regulations on the privatization of state-owned, non-agricultural land through commercial tenders. The GOM has approved a list of assets subject to privatization.

The Law on Investment in Entrepreneurship prohibits discrimination against investments based on citizenship, domicile, residence, place of registration, place of activity, state of origin or any other grounds. The law provides for equitable and level-field conditions for all investors. It rules out discriminatory measures hindering the management, operation, maintenance, utilization, acquisition, extension or disposal of investments. Local companies and foreigners are to be treated equally with regard to licensing, approval, and procurement.

Rankings for Moldova:

Measure Year Index/Ranking

TI Corruption Index 2010 105 of 176 (2009 92 of 180)

Heritage Economic Freedom 2010 120 of 183 (2010 125 of 183)

World Bank Doing Business 2010 90 of 183 (2009 87 of 183)

MCC Government Effectiveness 2011 0.35 (79%) (Median 0.00)

MCC Rule of Law 2011 0.47 (79%) (Median 0.00)

MCC Control of Corruption 2011 0.04 (56%) (Median 0.00)

MCC Fiscal Policy 2011 -2.5 (43%) (Median -2.3)

MCC Trade Policy 2011 80.2 (90%) (Median 68.6)

MCC Regulatory Quality 2011 0.54 (95%) (Median 0.00)

MCC Business Start Up 2011 0.986 (93%) (Median 0.944)

MCC Land Rights Access 2011 0.869 (100%) (Median 0.597)

MCC Natural Resource Mgmt 2011 69.49 (73%) (Median 61. 88)

Moldova receives an annual scorecard from MCC assessing its performance in 17 indicators in the three policy categories of Ruling Justly, Investing in People, and Economic Freedom. For each indicator Moldova receives a score and percentile ranking in its income peer group (0 percent is worst; 50 percent is the median; 100 percent is best). For each percentile ranking Moldova receives its peer group median. Country performance is evaluated relative to the peer group median. Scores above the peer group median meet the MCC required performance standard for eligibility for MCC programs. Scores at or below the median do not meet the performance standard.

Conversion and Transfer Policies

Moldova accepted Article VIII of the IMF Charter in 1995, which required liberalization of foreign exchange operations. There are no restrictions on the conversion or transfer of funds associated with foreign investment in Moldova. After the payment of taxes, foreign investors are permitted to repatriate residual funds. Residual-funds transfers are not subject to any other duties or taxes, and do not require special permission. There are no significant delays in the remittances of investment returns, since domestic commercial banks have accounts in leading multinational banks. Foreign investors enjoy the right to repatriate their earnings.

Generally, there are no difficulties associated with the exchange of foreign or local currency in Moldova. However, shortages of Moldovan currency do occur in exchange offices, usually at times of sharp exchange rate fluctuations. While the local currency, the Moldovan leu (plural, lei) (MDL), has been generally stable, its exchange rate has proven volatile in the face of external shocks. All transactions, including large value transactions, are permitted only in MDL for residents in Moldova; transactions are permitted in other currencies for non-residents. After several years of appreciation owing to the weakness of the U.S. dollar, a massive surge in remittances and changes in monetary policies, the trend reversed in 2009 as a result of the fallout from the global economic crisis coupled with the uncertainties of an electoral year. Furthermore, the NBM's interventions on the foreign exchange market in the latter months of 2009 contributed to a depreciation of the national currency. In 2010, the MDL went through ups and downs and finished the year with moderate appreciation owing to a rebound in exports and inflows of remittances. In 2010, the MDL began the year at 12.30 to one U.S. dollar and finished it off at 12.15.

The U.S. Embassy has no information on complaints from U.S. investors regarding converting or remitting funds associated with investments in Moldova.

Expropriation and Compensation

The Law on Investment in Entrepreneurship states that investments cannot be subject to expropriation or to measures with a similar effect. An investment may be expropriated only if all three of the following conditions are present: the expropriation is done for purposes of public utility, is not discriminatory, and is done with just and preliminary compensation. If a public authority violates an investor's rights, the investor is entitled to reparation of damages. The compensation will be equivalent to the real extent of the damage at the time of occurrence. The public authorities concerned will pay compensation for any damage caused, including any lost profits. Compensation must be paid in the currency in which the original investment was made or in any other convertible currency.

The government has given no evidence of intent to discriminate against U.S. investments, companies, or representatives by expropriation, or of intent to expropriate property owned by citizens of other countries. No particular sectors are at greater risk of expropriation or similar actions in Moldova.

Moldovan law restricts the right to purchase agricultural and forest land to Moldovan citizens. Foreigners may become owners of such land only through inheritance and may only transfer the land to Moldovan citizens. In 2006, Parliament further restricted the right of sale and purchase of agricultural land to the state, Moldovan citizens, and legal entities without foreign capital. However, foreigners are permitted to buy all other forms of property in Moldova, including land plots under privatized enterprises and land designated for construction. Moldovan-registered companies with foreign capital are known to own agricultural land, by means of loopholes in the previous law. In the past, the limit on foreign ownership of agricultural land was used in lawsuits as an argument against foreign companies. The only straightforward option available to foreigners who wish to use agricultural land in Moldova at this time is to rent agricultural land.

Since 2001, the GOM has cancelled several privatizations, citing the failure of investors to meet investment schedules or irregularities committed during privatization. While the government agreed to repay investors in such disputes, payment of compensations was delayed. Often, investors had to apply to the European Court of Human Rights (ECHR) to enforce payment of compensation from the Moldovan government. The GOM has been compliant with the ECHR rulings involving foreign businesses.

Investors should be aware that most Moldovan territory east of the Nistru (Dniester) River is under the control of a separatist regime that does not recognize the sovereignty of the legitimate Moldovan authorities in Chisinau. These separatists have declared a self-proclaimed "Dniester Moldovan Republic," commonly known as "Transnistria." The U.S. Embassy advises any potential investors that it is limited in its ability to provide any assistance, including consular and commercial services, in areas east of the Nistru River. Also, the GOM has indicated in the past that it will not recognize the validity of contracts for the privatization of firms in Transnistria that are concluded without the approval of the appropriate Moldovan authorities. In March 2006, Ukraine imposed new customs regulations under which Transnistrian companies seeking to engage in cross-border trade had to register in Chisinau. Despite initial protests by the local regime, most of Transnistria's large companies subsequently registered with Moldovan authorities.

In 2000, a U.S. company claimed that it exported packing equipment and other capital goods to a privatized Transnistrian factory, only to be forced out later by the local factory manager working in collusion with local authorities. The company's representatives reported that they had been harassed by Transnistrian authorities until they decided that the safety of their company's employees could not be guaranteed and the company decided to pull out.

Dispute Settlement

Moldova has a record of disputes over past privatizations involving foreign investors. Party of Communists (PCRM) officials, when in opposition prior to 2001, were critical of what they regarded as "sweetheart deals" in many privatizations. Consequently, once in power in 2001, the first PCRM-backed government increased its scrutiny of the privatization process, including previously concluded contracts. (The PCRM lost power following the July 2009 parliamentary elections.) The GOM cancelled some privatizations because of alleged irregularities in the privatization procedures or the failure of investors to meet an investment timetable. There have been allegations in recent years from companies that they became politically motivated targets of investigations by the Center for Combating Economic Crimes and Corruption (CCECC), while others complained of bureaucratic red tape or arbitrary decisions made by government agencies, and police or tax authorities.

As a result of negotiations connected with Moldova's accession to the WTO, modern commercial legislation was adopted in accordance with WTO rules. The main challenges to the business climate remain the lack of effective and equitable implementation of laws and regulations, and arbitrary, non-transparent decisions by government officials. In circumvention of WTO principles, the GOM nevertheless applies measures that put domestic producers at an advantage in comparison with foreign competitors in certain areas. For example, an environmental tax is applied on bottles and other packaging of imported goods, while such a tax is not levied on bottles and packaging produced in Moldova.

In 2003, the government restructured the judiciary by eliminating the lower-tier of appellate courts (called tribunals) and the Higher Court of Appeals. The judiciary now consists of lower courts (i.e., trial courts), five courts of appeals, and the Supreme Court of Justice. Moreover, a separate layer of courts covering the judicial settlement of economic/trade-related litigation was created. This quasi-separate court system consists of the District Economic Court as a trial court, the Economic Court of Appeals, and the Supreme Court of Justice, whose jurisdiction includes the adjudication of economic litigation. In 2010, there was an initiative by the government to reorganize the economic courts and include them in the common court system. However, Parliament blocked this initiative. Courts are nominally independent from government interference. However, the Ministry of Justice controls their administration and budget, and reports of interference in lawsuits by influential figures are commonplace. In January 2008, a new department was created under the Ministry of Justice - the Judicial Administration Department – which deals with all judiciary-related administrative and financial matters. Moldovan courts suffer from low levels of efficiency, independence, and citizen trust. In 2010, the judiciary underwent a series of internal reforms. New members were elected to the three judicial system administration entities, namely, the Superior Council of Magistrates, the Qualifications Board and the Disciplinary Board. The newly-elected members of these three judicial administration entities worked more efficiently in terms of the dismissals and promotions of judges. In comparison with previous years, the number of dismissed judges increased.

The GOM accepts binding international arbitration of investment disputes between foreign investors and the state. By law, investment disputes can be solved in Moldovan courts or through arbitration. In the event of ad hoc arbitration, the law requires compliance with the United Nations Commission on International Trade Law (UNCITRAL) rules, arbitration rules of the Paris International Chamber of Commerce (ICC) of January 1, 1998, and other rules, principles, and norms agreed upon by the parties.

Moldova is a signatory to the Convention on the International Center for the Settlement of Investment Disputes (ICSID - Washington Convention) and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Moldova is also a party to the Geneva European Convention on International Commercial Arbitration of April 21, 1961, and the Paris Agreement relating to the application of the European Convention on International Commercial Arbitration of December 17, 1962. Moldova has also ratified various trade agreements establishing bilateral investment protection with 35 countries, including with the United States. Moldova enjoys normal trade relations with the United States.

Performance Requirements and Incentives

All incentives are applied uniformly to both domestic and foreign investors. Unlike its predecessor, the Law on Investment in Entrepreneurship, in effect since 2004, no longer protects new investors from legislative changes for ten years. However, the new law left in effect past privileges and guarantees granted to foreign investors under the old Law on Foreign Investment. One such privilege provides for exemptions from customs duties on imports until April 23, 2014, if the imports are used to manufacture goods bound for export.

Effective January 1, 2008, a zero percent income tax rate on re-invested corporate profits entered into force as part of a GOM initiative of "economic liberalization." The GOM has promised to do away with the zero percent income tax rate on re-invested corporate profits in 2013. The current Moldovan Tax Code also provides for a series of corporate income tax breaks. Many of these tax breaks were rendered redundant when the new zero tax rate was introduced.

Companies with investments of more than $250,000 in charter capital enjoy a 50 percent exemption from income tax for five consecutive years. Companies with investments exceeding $2 million in charter capital enjoy full exemption from income tax for three consecutive years. Companies are eligible for such exemptions, if at least 80 percent of their income tax payments were reinvested in production development or in national or business sector development programs. For a minimum investment of $5 million, a company is exempt from income tax payments for three years, if it reinvests locally 50 percent of what it would otherwise have paid in income tax. A $10 million investment requires only 25 percent reinvestment of income tax payment for a full three-year exemption from income tax. Four-year exemptions are available for $20 million investments with 10 percent reinvestment and $50 million investments with zero percent reinvestment. Furthermore, upon expiration of these exemptions, eligible companies investing an additional $10 million can enjoy tax exemptions for an extra three-year period. Also, fixed assets contributed in-kind to the charter capital are exempted from the value-added tax and customs duties. Full income tax exemptions may also be enjoyed by small businesses (three years), software developers (five years), agribusiness (five years), and scientific research and innovations (unspecified). Commercial banks and microfinance organizations are tax-exempt on income derived from loans with maturities over three years. Other tax exemptions and deductions are also available according to the Tax Code. The loss carry-forward period was raised from three to five years.

No formal requirements exist for investors to purchase from local sources or to export a certain percentage of their output.

No limitations exist on access to foreign exchange in relation to a company's exports. There are no special requirements that nationals own shares of a company. Both joint ventures and wholly foreign-owned companies may be set up in Moldova.

While this is not official policy, in strategic sectors of the economy, such as energy and telecommunications, the GOM has always preferred to have experienced foreign investors instead of local investors. In all other sectors, foreign and local investors are nominally treated the same.

The government does not impose "offset" requirements on procurements. Moldovan law allows investments in any area of the country in any sector, provided that national security interests, anti-monopoly legislation, environmental protection, public health, and public order are respected.

Enforcement procedures for performance requirements to enjoy tax incentives are described in the Tax Code and related governmental decisions and Ministry of Finance instructions.

Foreign investors are required to disclose the same information as local ones. Moldova has no discriminatory visa, residence, or work-permit requirements inhibiting foreign investors' mobility in Moldova. However, the government administers a quota system limiting the number of available residence permits. In 2010, the GOM set up a one-stop shop for foreigners applying for Moldovan residence and work permits in a bid to streamline a rather complicated procedure.

Moldova has commercial relations with over 100 countries. It has a liberal commercial regime. According to the Tax Code, Moldovan exports are exempt from value added tax. Although there are no formal import price controls, some businesses have complained about arbitrary price assessments on imported goods by the Moldovan Customs Service.

Right to Private Ownership and Establishment

The Constitution of the Republic of Moldova guarantees the inviolability of investments by all natural and legal entities, including foreigners. Key constitutional principles include the supremacy of international law, a market economy, private property, provisions against unjust expropriation, provisions against confiscation of property, and separation of powers among government branches. The Constitution provides for an independent judiciary; however, government interference and corruption remain problems in the application of laws and regulations and in the impartiality of the courts.

Current investment legislation is based on nondiscrimination between foreign and local investors. Moldovan law ensures full and permanent security and protection of all investments, regardless of their form. There are no economic or industrial strategies that have a discriminatory effect on foreign-owned investors in Moldova, and no limits on foreign ownership or control, except in the right to purchase and sell agricultural and forest land, which is restricted to Moldovan citizens.

In addition to international treaties, Moldovan law regulates business activity, including foreign investments. Such laws include, but are not limited to, the Civil Code, the Law on Property, the Law on Investment in Entrepreneurship, the Law on Entrepreneurship and Enterprises, the Law on Joint Stock Companies, the Law on Small Business Support, the Law on Financial Institutions, the Law on Franchising, the Tax Code, the Customs Code, the Law on Licensing Certain Activities, and the Law on Insolvency.

The current Law on Investment in Entrepreneurship came into effect on April 23, 2004. It was designed to be compatible with European legislative standards and defines types of local and foreign investment. It also provides guarantees for the respect of investors' rights, non-application of expropriation or actions similar to expropriation, and for payment of damages in the event investors' rights are violated. The law permits investment in all sectors of the economy, while certain activities require a business license.

There is no screening of foreign investment in Moldova and legislation permits 100 percent foreign ownership in companies. By statute, special forms of legal organizations and certain activities require a minimum of capital to be invested (e.g., Moldovan Lei (MDL) 5,400 ($440) for limited liability companies, MDL 20,000 ($1,620) for joint stock companies, MDL 15 million ($1.21 million) for insurance companies and MDL 100 million ($8.1 million) for banks.

Protection of Property Rights

The legal system protects and facilitates the acquisition and disposition of all property rights. Moldova has adopted laws on property and on mortgages. A system for recording property titles and mortgages is in place; however, the mortgage market is still underdeveloped.

Moldova adheres to key international agreements on intellectual property rights. Moldova is a signatory to the International Convention Establishing the World Intellectual Property Organization. However, the Business Software Alliance consistently ranks Moldova among the top ten offenders for the use of unlicensed software in government agencies.

Moldova took measures to implement and enforce the WTO TRIPS agreement before its official accession to the WTO, and adopted local laws to protect intellectual property, patents, copyrights, trademarks, and trade secrets. The country has an agency for the protection of copyright, the State Agency for Intellectual Property. The country also has a few professional associations dedicated to protecting its members' copyrights. Although many basic policies are in place and meet international standards in the field, enforcement is sporadic. The GOM undertook measures to crack down on sales of unauthorized copies of CDs, DVDs, and cassettes. It has made attempts recently to deal with internet piracy as well. However, copyright infringements are rarely prosecuted, if at all. A new law on copyright and related rights went into effect on January 1, 2011, increasing the role of internet providers in preventing the spread of pirated materials. To make the new copyright law effective and toughen penalties for copyright infringements, Moldova still needs to implement changes to its Code of Administrative Contraventions and Criminal Code.

Transparency of the Regulatory System

Bureaucratic procedures are not always transparent and red tape often makes processing registrations, ownership, etc. unnecessarily long, costly, and burdensome. Discretionary decisions by state functionaries provide room for corruption. The GOM has been taking steps to reduce excessive government regulation of business activity since 2004. In 2004, a so-called "guillotine law" eliminated costly and obsolete regulations and forced the publication of all business-related regulations. All regulations and governmental decisions related to business activity have been published in a special business registry - also known as the "Register of Regulations on Business Activity." These steps were intended to raise the awareness of business people about their rights, increase the transparency of business regulations, and help fight corruption. A second "guillotine law," the Law on Basic Principles Regulating Entrepreneurial Activity, was enacted in August 2007. The GOM started applying a Regulatory Impact Assessment to all draft laws and acts bearing on business activity to enhance transparency in the drafting of laws and regulatory acts. The GOM vetted 100 laws with the goal of reducing payments to regulatory and control bodies and streamlining business-licensing procedures and economic-financial controls. As part of the USAID-backed "Guillotine 2+" in 2010, the Ministry of Economy reviewed the number of permits and authorizations issued to businesses as well as the number of authorities issuing such documents. Out of a total of 406 such permits, at least 96 will be cancelled. The GOM has also drafted the Concept of One-Stop Shop to introduce clear and uniform rules for the release of information and standardized documents through a one-stop window. The GOM took further steps to deregulate construction projects by reducing the number, cost, and time of administrative procedures needed to get building permits.

The legal framework for anti-monopoly regulation is the Law on Protection of Competition. The law establishes the fundamental principles, based on EU standards, for regulating the activity of enterprises with a de facto monopoly and for support and development of competition. After several years of delay, the government established a National Competition Agency in 2007. However, the agency's targeted actions against major foreign investors from its outset drew accusations of abuse, lack of experience, and flawed antitrust legislation. While the GOM has taken note of the business community's complaints, it has not taken action to change the law.

In 2010, the government moved forward in streamlining business registration with the implementation of a "one-window" approach. Despite the creation of a Licensing Chamber in 2002 and a significant reduction in the number of regulated business activities requiring licensing, businesses must still provide a great deal of supporting documentation to receive a license. The GOM has made progress in simplifying registration procedures during the startup stage, but still must take steps to ease day-to-day business activity and simplify regulation of foreign trade transactions, business licensing, and lending.

The government usually publishes significant laws in draft form for public comment. Business fora and trade associations represent other opportunities for comment. The working group of the State Commission for Regulation of Entrepreneurial Activity, which was established as a filter to eliminate excessive business regulations, meets weekly to vet draft governmental regulations dealing with entrepreneurship. The working group's meetings are open to interested businesses. The Foreign Investors Association (FIA) was established in 2004 with the support of the OECD. The FIA engages in a dialogue with the GOM on topics related to the investment climate and publishes an annual White Book of concerns and recommendations for the improvement of the investment climate. In 2006, the American Chamber of Commerce (AmCham) was registered in Moldova, representing another voice for the business community. In fall 2009, the AmCham produced a Roadmap for the Development of Moldova's Business and Economic Climate which it presented to the new Prime Minister. The Roadmap made a number of recommendations to improve business regulation.

In 2003, the GOM passed new criminal and civil codes and ratified several important international conventions that, in general, create a better environment for the market system.

Moldova introduced its National Accounting Standards (NAS), based on International Accounting Standards (IAS), in 1998. While this meant greater transparency of financial information and compatibility with IAS, the NAS has not been updated since then, leaving it outdated. NAS is not compatible with the International Financial Reporting Standards (IFRS). A new law on accounting took effect on January 1, 2008. The law has undergone changes and the original dates of application of IFRS were postponed indefinitely. Only banks, insurance companies, non-governmental pension funds, investment funds, and publicly listed companies are obliged by law to apply the IFRS beginning January 1, 2011, in parallel with NAS for comparison purposes.

Efficient Capital Markets and Portfolio Investment

Laws, governmental decisions, securities regulations, NBM regulations, and Stock Exchange regulations provide the framework for capital markets and portfolio investment in Moldova. The GOM began regulatory reform in this area in 2007 with a view to spurring the development of the weak non-banking financial market. In particular, since 2008 only two bodies – the NBM and the National Commission on the Financial Market – regulate financial and capital markets.

Credit is allocated on market terms with banks being the only reliable source of business financing. The GOM regulates credit policy via credits from the NBM, auctions through commercial banks, compulsory reserves, credits secured through collateral, open market operations, and T-bill auctions on the primary market. Foreign investors may obtain credit on the local market. However, local commercial banks loan funds at high interest rates, and mostly on short-term, which reflect the country's perceived high economic risk. After the economic downturn of 2009 which put a strain on the country's banking sector, 2010 saw a recovery in lending activity and a drop in interest rates. While banks managed to improve their loan portfolios, the share of non-performing loans in total credits remains well above pre-crisis levels. Large investments rarely can be financed through a single bank and require a bank consortium. Recent years have seen a growth in leasing and micro-financing. In 2007, Raiffeisen Leasing was the first international leasing company to open a representative office in Moldova.

The private sector's access to credit instruments is difficult because of the insufficiency of long-term funding and excessively high interest rates. Financing through local private investment funds is virtually non-existent. A few U.S. investment funds have been active on the Moldovan market, notably NCH Advisors, Western NIS Enterprise Fund, and Emerging Europe Growth Fund, the latter two managed by Horizon Capital equity fund managers.

Moldova's securities market is generally underdeveloped. In 2007, a "mega-regulator," the National Commission on the Financial Market (NCFM), replaced the National Securities Commission. The NCFM supervises the securities market, insurance sector and non-bank financing. The NCFM is operationally independent. Starting October 1, 2008, it acquired the right to issue and to withdraw licenses for all non-bank financial sectors it supervises. The Commission adopted a Corporate Governance Code and passed new regulations intended to simplify the issuance of corporate securities and increase the transparency of transactions on the Moldovan Stock Exchange.

Moldovan banks are the main source of business financing, with non-bank financing, albeit growing, poorly developed. The banking system has two levels: the NBM and 15 commercial banks. The NBM supervises the commercial banks and reports to the Parliament. The GOM holds a controlling stake in one bank, Banca de Economii. Foreign investors' share in Moldovan banks' capital is more than 75 percent.

As of October 31, 2010, total bank assets were MDL 41,107 million ($3.3 billion). Moldova's five largest commercial banks account for almost 70 percent of the total bank assets, as follows (as of October 31, 2010): MoldovaAgroindbank: MDL 8,221 million ($661 million) in assets; Victoriabank: MDL 6,487 million ($521 million); Moldindconbank: MDL 5,186 million ($417 million); Banca de Economii: MDL 5,077 million ($408 million); and Eximbanca: MDL,3,437 million ($276 million).

Competition from State Owned Enterprises

Moldovan legislation does not formally discriminate between state-owned enterprises and private-run businesses. By law, governmental authorities have to provide a level legal and economic playing field to all enterprises.

The Law on Entrepreneurship and Enterprises permits only state enterprises to participate in the following activities:

- Some types of human and animal medical research;

- Manufacture of orders and medals;

- Production of symbols verifying payment of state taxes and fees;

- Postal services (except express mail) and production of postage stamps;

- Sale and production of combat and special military technical equipment, explosives (except gun powder), and all weapons;

- State registry, tracking and technical inventory of real estate, restoration of ownership titles, and administration of real estate;

- Printing and minting of currency and printing of state securities; and

- Certain scientific activities.

The GOM has privatized most state-owned enterprises, and some sectors of the economy are almost entirely in private hands. However, some large enterprises are still controlled by the government and their privatization has been either postponed indefinitely or abandoned altogether. The major government-owned enterprises are two northern electrical distribution companies, the Chisinau heating companies, the fixed-line telephone operator Moldtelecom, the state airline Air Moldova, the state railway company, and the majority state-owned bank Banca de Economii. State-owned enterprises are sometimes seen to be at an advantage relative to privately-run businesses. Some of these state-run companies use their dominant position in the industry to stifle competition from the private sector

After a period of abated privatization activity consisting of a selloff of residual governmental shares in companies originally sold during the mass privatizations of the 1990s, the GOM picked up efforts to sell a series of attractive assets in 2008, privatizing the footwear manufacturer Zorile, the former Soviet military-industrial complex Mezon, and the hotel Codru. Many have questioned the sales which sometimes appeared to be made at rates far below market value. The new GOM which came into office in September 2009 continued the selloff of government assets; as a result of the global economic crisis and uncertain political situation of 2009-2010, the GOM's privatization efforts generated less than expected results. In 2010, the GOM was able to achieve only a fifth of its annual privatization target of 430 million lei ($35 million).

Corporate Social Responsibility

Corporate Social Responsibility (CSR) and a culture of volunteerism and philanthropy are not highly developed in Moldova. Many Moldovans still have a view widely held from Soviet times of a paternalistic government being responsible for maintaining the social welfare of all citizens. With the entry of foreign companies into the Moldovan economy, the concept of CSR is being introduced. AmCham has taken a lead by organizing an annual CSR conference at the end of October for the past four years. AmCham has also set an example with its corporate members in the business sector by engaging in a forestation project, in the rehabilitation of medical facilities, and in Christmas collection projects for orphanages.

Foreign investors have incorporated CSR principles into their operations. CSR activities are viewed positively by Moldovans, but are largely centered in the capital of Chisinau.

Political Violence

The U.S. Embassy has received no reports over the past ten years involving politically-motivated damage to business projects or installations in Moldova. Following parliamentary elections in April 2009, protestors severely damaged the Parliament and the Presidential Administration buildings. However, the unrest was very limited and no business facilities or projects were targeted.

Separatists control the Transnistrian region of Moldova along part of the eastern border with Ukraine. Although a brief armed conflict took place in 1991-1992, the cease-fire of July 1992 has generally been observed. Local authorities in Transnistria maintain a separate monetary unit, the Transnistrian ruble (current market exchange rate is approximately 10.2 rubles per U.S. dollar), and a separate customs system. Despite the political separation, economic cooperation takes place in various sectors. In recent years, the GOM has implemented measures requiring businesses in Transnistria to register with Moldovan authorities (see chapter A.3.Expropriation and Compensation). The Organization for Security and Cooperation in Europe (OSCE), Russia, and Ukraine acting as guarantors/mediators and the U.S. and EU as observers continue to support negotiations between Moldova and the separatist region Transnistria (known as the "five plus two" format). Settlement talks stalled in 2006, but negotiations have resumed sporadically. Any progress in talks has been piecemeal at best.

Corruption

Moldova is making efforts to adopt European and international standards to combat corruption and organized crime. In 2007, Moldova ratified the United Nations Convention against Corruption, subsequently adopting amendments to its domestic anti-corruption legislation. In 2008, the GOM developed and enacted a series of companion laws designed to address current legislative gaps such as the Law on Preventing and Combating Corruption, the Law on Conflict of Interests and the Law on the Code of Conduct for Public Servants. However, in 2009, an Anticorruption Prosecutor's Office report stated that a lack of experience and a rushed enactment process of these laws led to a series of shortcomings that were identified throughout 2009. In 2010, the situation remained similar. For example, the Law on Conflict of Interests provides for the creation of an Ethics Commission, responsible for handling conflict of interest issues among public officials. This entity was not created in 2010.

Moldova's Criminal Code (effective June 12, 2003) includes articles on public and private sector corruption, combating economic crimes, criminal responsibility of public officials, active and passive corruption, and trade of influence. These additions put the legislation more in line with international, anti-bribery standards by criminalizing the act of offering a bribe. Under this definition, the act of promising, offering or giving a bribe to a public official is a crime. In 2009, the GOM initiated and implemented a comprehensive legislative initiative generically called "humanization of criminal penalties." This initiative aimed at introducing a series of amendments to the Criminal Code which were meant to repeal certain terms that were not in line with EU standards. In terms of penalties, the amendments aimed at decreasing the imprisonment time and increasing fines. This initiative has also affected the corruption crimes category.

According to the Moldovan Criminal Code, offering a bribe is regulated by Art. 325 entitled "Active Corruption." Penalties for offering a bribe include prison terms up to 12 years and fines of up to 60,000 MDL (approximately $4,900). The minimum penalty for offering a bribe is now imprisonment for up to five years with a fine of 20,000 MDL (approximately $1,600) to 60,000 MDL (approximately $4,900). If committed by two or more persons or on a large scale, the offering of a bribe is punishable with imprisonment from three to seven years with a fine of 20,000 MDL (approximately $1,600) to 60,000 MDL (approximately $4,900). The maximum penalty for offering a bribe in its aggravated forms, on an especially large scale, in the interest of an organized criminal group or criminal organization is punishable with imprisonment from six to twelve years with a fine from 20,000 MDL (approximately $1,600) to 60,000 MDL (approximately $4,900).

Accepting a bribe is regulated by the Moldovan Criminal Code under Art. 324 - "Passive Corruption." Penalties for accepting a bribe include prison terms up to 15 years and fines of up to 60,000 MDL (approximately $4,900) the deprivation of the right to hold certain positions or practice certain activities for two to five years.

Several international and local organizations in Moldova work on combating corruption. Moldova's MCC TCP, as discussed in chapter A.1.Openness to, and Restrictions upon, Foreign Investment, targeted corruption in the judiciary, the health care, tax, and customs and police agencies.

In 2005, the Council of Europe's Program against Corruption and Organized Crime (PACO) launched a one-year regional project called "Support for the National Anti-Corruption Strategy of Moldova." An agreement for a follow-up project - the Project against Corruption, Money Laundering, and Terrorism Financing in the Republic of Moldova (MOLICO) - was signed in July 2006 by the Council of Europe, the European Commission, and the Swedish International Development Cooperation Agency. The MOLICO project is aimed at ensuring the implementation of Moldova's anti-corruption strategy on the basis of annual action plans and strengthening the anti-money laundering/counter- terrorist financing system of Moldova.

Moldova is not a signatory of the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery. However, Moldova is part of two regional anti-corruption initiatives: the Stability Pact Anti-Corruption Initiative for South East Europe (SPAI) and the Group of States against Corruption (GRECO) of the Council of Europe. Moldova cooperates closely with the OECD through SPAI and with GRECO, especially on country evaluations. In 1999, Moldova signed the Council of Europe's Criminal Law Convention on Corruption and Civil Law Convention on Corruption. Moldova ratified both conventions in 2003.

In past years, the U.S. Embassy received reports from foreign investors of serious problems with corruption and bribery. For example, in 2008, when a foreign investor discovered that he had under-paid his taxes and wished to remedy the situation, the tax inspector assigned to the company attempted to extort money. The tax service later lauded the investor for his self-reporting and negotiated a reduced payment. The Embassy also has received reports of "informal" hostile takeovers of profitable businesses. In these cases, business owners were approached by politically-connected individuals who wished to acquire part of the businesses. When business owners refused, they were soon forced to close via non-transparent measures.

According to the Global Corruption Barometer 2010 carried out by Transparency International, corruption is most pervasive in the following areas: law enforcement; the judicial system; public service; political parties; the educational system; and the legislative system.

Moldova's ranking in Transparency International's Corruption Perception Index (CPI) fell in 2010 to 105 out of 176 countries. By comparison, in 2009, Moldova was ranked 92 out of 180.

In December 2009, the Moldovan Cabinet of Ministers approved the draft Law on Bailiffs which was developed by the Ministry of Justice. The draft law provides for the creation of a private bailiffs system. The process of drafting this legislation is the first action aimed at bringing a change to the enforcement system in Moldova. The non-enforcement or tardy enforcement of court judgments still remains a problem. This situation affects the degree of trust that society has with respect to the judiciary and also triggers negative consequences in the development of a sound business environment in Moldova. In 2009, the Council of Europe organized a visit of European experts to Moldova to assess the process of court judgments enforcement. The experts concluded that the bailiffs system lacked financial resources to pursue an effective and timely enforcement of court judgments and orders. Moreover, based on a complex analysis of cases that Moldova lost at the European Court of Human Rights, the experts advised the GOM to review the status of the bailiffs and consider the liberalization of this profession as a solution. In 2010, the Parliament enacted the Law on Bailiffs which entered into force on July 23, 2010. Also, in September 2010, the Private Bailiffs Union was created. The private bailiffs work in individual or associated offices. Their program of activities is approved by the National Bailiffs Union – a professional organization representing this profession.

Bilateral Investment Agreements

Moldova has signed bilateral investment protection and promotion agreements with 35 countries. In addition to the United States, these include Albania, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, China, Croatia, the Czech Republic, Finland, France, Georgia, Germany, Greece, Hungary, Israel, Italy, Kuwait, Kyrgyzstan, Latvia, Lithuania, the Netherlands, Poland, Romania, Russia, Slovenia, Spain, Switzerland, Tajikistan, Turkey, Ukraine, the United Kingdom, and Uzbekistan.

Moldova has a bilateral treaty with the United States on the Encouragement and Reciprocal Protection of Investment. Moldova has not signed a separate bilateral taxation treaty with the U.S. However, the U.S. Government applies the Convention on Matters of Taxation signed with the USSR on June 20, 1973, which also deals with avoidance of double taxation, to all former Soviet republics, including Moldova

OPIC and Other Investment Insurance Programs

In 1992, the Moldovan and U.S. governments signed an investment incentive agreement that exempts OPIC from Moldovan taxes on loan interests and fees. OPIC became active in Moldova in September 1997, providing political-risk insurance to an American company investing in an agribusiness. Since then, OPIC has provided a number of financial and insurance products to U.S. businesses operating in Moldova in such fields as agribusiness, telecommunications, banking, consulting, transportation logistics, and mortgage financing.

The U.S. Export-Import Bank (Ex-Im) provides U.S. companies investing in Moldova short- and medium-term financing in the private sector under its insurance, loan, and guarantee programs. In 2000, the Ex-Im Bank and Moldova signed a Framework Guarantee Agreement setting the terms for the GOM to issue sovereign guarantees to facilitate Ex-Im Bank financing of U.S. exports to Moldova. Also in 2000, the Ex-Im Bank and Moldova signed a Project Incentive Agreement that enabled the Bank to consider financing of U.S. exports for credit-worthy private sector projects in Moldova on a non-sovereign risk basis, but which required host-government support in project-related activities such as permit and license approvals. Under the agreement, repayment of Ex-Im Bank financing is based on the capture of financed projects' revenue streams in special escrow accounts held in banks approved by the Ex-Im Bank.

In 2002, the Ex-Im Bank signed a memorandum of cooperation with the Black Sea Trade and Development Bank. Under the memorandum, the Ex-Im Bank's financing products can be used to support exports of U.S. goods and services to any country located in the Black Sea region, including Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Turkey, and Ukraine. The agreement enables the Black Sea Trade Development Bank to act as a guarantor of specific transactions and also provides for parallel financing arrangements.

Moldova is eligible for U.S. Trade and Development Agency (USTDA) funding for feasibility studies, orientation visits, specialized training grants, business workshops, and other forms of technical assistance. USTDA considers funding for a wide range of sectors with export potential for U.S. companies. In 2003, USTDA approved funding for a study on upgrading the telecom system for the Moldovan Customs Service.

Institutions such as the European Bank for Reconstruction and Development and the World Bank are very active in Moldova in both the private and public sectors, offering various financial tools for both insurance and credit. Moldova is a member of the Multilateral Investment Guarantee Agency (MIGA) and a member of the **World Bank group**. MIGA promotes **foreign direct investment** into **developing countries** by insuring **investors** against **political risk**, advising governments on attracting investment, sharing information through on-line investment information services, and mediating disputes between investors and governments. Moldova is also eligible for project and trade financing from the Black Sea Trade and Development Bank. The country has also benefitted from loans extended by the EU's European Investment Bank and the Council of Europe Development Bank.

Labor

Skilled labor is readily available in Moldova, which has an adult literacy rate above 99 percent, according to the United Nations Development Program. The labor force includes numerous workers with specialized and technical skills, but labor migration has led to some shortages of workers. Moldova's Constitution guarantees all employees the right to establish or join a trade union. Trade unions have influence in the large and mostly state-owned enterprises and historically have been strong in negotiations on labor relations, such as minimum wage and basic worker rights.

Unions are less active in small private companies. Moldova is a signatory to numerous conventions on the protection of workers' rights.

The Moldovan General Federation of Trade Unions has been a member of the ILO since 1992, and has also been affiliated with the International Confederation of Free Unions (ICFU) since 1997. The Federation split into two separate unions in 2000, but merged in 2007, forming the National Trade Union Confederation (CNSM). After attempts of the previous Communist-led government to interfere in the activity of unions, the CNSM was isolated from the international trade unions movement. With a change in government in 2009 and the election of new trade union leaders, CNSM was given membership in the International Trade Union Confederation in 2010.

Foreign Trade Zones/Free Ports

One of the GOM's stated economic policies is the creation and development of free economic zones (FEZ). At present, seven FEZs, one international free port – Giurgiulesti – and one international free airport – Marculesti - are registered in Moldova. According to Moldovan law, job creation, attraction of foreign and domestic investments and export-oriented production are the main goals of such zones. FEZ activity is regulated by the Law on Free Economic Zones (2001). Foreigners have the same investment opportunities as local entities. FEZ commercial entities enjoy the following advantages: 25 percent exemption from income tax; 50 percent exemption from tax on income from exports; for investments of more than $1 million, a three-year exemption from tax on income resulting from exports, and for investments of more than $5 million, a five-year exemption from tax on income from exports; zero value-added tax; exemption from excises; and protection of residents against any changes in the law for 10 years.

The GOM also passed the law on industrial parks in 2008 with the aim of attracting investments in industrial projects. Businesses operating in industrial parks do not enjoy special tax treatment, but typically have access to ready-to-use production facilities and offices and lower rent fees. Industrial parks have been identified for establishment in Floresti (60 ha, located close to the border with Ukraine), Ungheni (50 ha, located on the border with Romania), Cainari (23 ha), and Drochia (14 ha). Feasibility studies have been conducted to identify other prospective areas for industrial parks. The GOM is also interested in the development of technical-scientific parks and business incubators.

Similar to the FEZs, the Giurgiulesti Free International Port, Moldova's only port accessible to sea-going vessels was established in 2005 for 25 years. Commercial residents of the port enjoy the following advantages: 25 percent exemption from income tax for the first 10 years following the first year when taxable income is reported; 50 percent exemption from tax on income for the remaining years; exemption from value-added tax and excises on imports and exports outside Moldova's customs territory; zero valued-added tax on imports from Moldova; and protection of commercial residents against any changes in the law until February 17, 2030.

Foreign Direct Investment Statistics

As of January 1, 2010, the total stock of foreign direct investment (FDI) inflows in Moldova since independence amounted to $2.649 billion, according to the NBM.

FDI grew steadily in recent years, but inflows dropped in 2009 as result of the global economic crisis. According to NBM data, FDI inflows (in millions of U.S. dollars) were as follows: $609.06 (2007); $863.76 (2008); $360.01 (2009); and $249.57 (Jan-Sep 2010).

FDI by country in 2009, according to NBM data and based on charter capital was as follows:

Cyprus $32.44 million

Germany $21.46 million

Romania $19.76 million

Italy $15.25 million

United States $10.96 million

Switzerland $10.30 million

Russia $4.67 million

Ukraine $3.58 million

Austria $2.05 million

Other countries $51.39 million

According to the NBM, the stock of FDI inflows by country of origin for the ten largest investing countries for the period 1992 to 2009 was:

1. Russia $172.75 million

2. Italy $129.44 million

3. United States $121.61 million

4. Germany $117.61 million

5. Cyprus $109.75 million

6. Romania $107.33 million

7. Netherlands $92.24 million

8. France $87.58 million

9. Austria $47.44 million

10. Switzerland $45.96 million

Based on figures from the National Bureau of Statistics, FDI by sectors as a percentage of total FDI since 1992 has been:

- Financial activities: 25.8 percent

- Food processing: 21.1 percent

- Wholesale, retail & repair services: 21.0 percent

- Electricity, gas, and water supply: 12.5 percent

- Real estate transactions: 8.5 percent

- Transportation and communications: 4.9 percent

- Hotels and restaurants: 2.1 percent

- Other activities: 4.1 percent

According to NBM data, at the end of 2009, Moldova's direct investment abroad since independence amounted to $62.44 million.

In 2009, FDI inflows were 6.7 percent of annual GDP ($5.403 billion), while the FDI stock was 49.04 percent of GDP.

Major U.S. investors or representatives of U.S. companies in Moldova include:

- NCH Group of Investment Funds: real estate and financing companies;

- Horizon Capital: equity investment fund managing the investments of Western NIS Enterprise Fund (which is phasing out its local activity) and the Emerging Europe Growth Funds I and II with holdings in banking, food processing, and glass manufacturing;

- McDonald's: fast food;

- Coca-Cola: soft drinks;

- Foodpro International: food processing;

- Development Group USA: food processing, wine, and media;

- Lion Gri: wine;

- Transoil Ltd.: farming, agribusiness, and grains trading;

- Mary Kay: perfumes and cosmetics;

- Avon: perfumes and cosmetics.